

BOARD OF APPEALS CASE NO. 5257

*

BEFORE THE

APPLICANTS: Dolores & William Braun

*

ZONING HEARING EXAMINER

REQUEST: Amend Board of Appeals Case No. 3522 and variance to allow an existing fence located in the open space; 1272 Courtney Lane, Belcamp

*

OF HARFORD COUNTY

*

Hearing Advertised

*

Aegis: 5/8/02 & 5/15/02

HEARING DATE: June 24, 2002

*

Record: 5/10/02 & 5/17/02

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicants, Dolores & William Braun, are requesting an amendment to Board of Appeals Case No. 3522, pursuant to Sections 267-36B, Table VII, and 267-23C(1)(a)[6] of the Harford County Code, to allow an existing lower deck within the required 23 foot rear yard setback, and a variance to Section 267-24B, to allow an existing fence to be located in the open space not on the subject property in an R4/PRD District.

The subject parcel is located at 1272 Courtney Lane, Belcamp, Maryland 21017, in the First Election District, and is more particularly identified on Tax Map 62, Grid Number 1F, Parcel 734, Lot 102, in the subdivision of Riverside. The parcel contains approximately 0.193 acres.

The Applicant, William E. Braun, appeared, and testified that he is the owner of the subject property. He indicated that he had read the Department of Planning and Zoning's Staff Report, and had no changes or corrections to the information contained therein. The witness described his property as an unusual, triangular shaped lot, which is mostly wooded. The lot backs to open space within the Riverside community, along the abandoned Belcamp Road, which is now a bike and walk path. The property is improved by a two-story dwelling with an attached one-car garage, a two-level deck attached to the rear of the home, and a split-rail fence in the left rear yard. The upper deck is enclosed as a porch. There is a frame utility shed located within the fenced area.

Case No. 5257 – Dolores & William Braun

The witness indicated that he and his wife purchased the property in January of 2001. They learned at settlement that the rear fence is not located on the property, but rather encroaches into the open space along Belcamp Road. Both the fence and the attached rear decks were present on the property when it was purchased by the Applicants.

According to Mr. Braun, the prior owner of the property, Terry A. Weekley, obtained a variance in 1987 (Case No. 3522) for the lower deck to be located within 23 feet of the rear property line. A permit was also obtained by the prior owner in 1987 for both decks, along with the rear fence and shed. In March 2002, the Applicant applied for a permit to enclose the upper deck, and to replace the railings on the lower deck, which are spaced too far apart to comply with current building codes. After applying for the aforesaid permit, he was advised by the Department of Planning and Zoning that the existing lower deck is located only 14 feet from the rear property line, as opposed to the approved 23 feet.

The Applicant referred to the site plan (Staff Report Attachment 4) which shows the location of the existing home, decks, fence, and shed. He then described several photographs attached to the Planning and Zoning Staff Report as Attachment 8. The top photograph shows the subject property, the front of the Applicants' home, and the surrounding properties. The second, third, and fourth photographs depict the rear of the home, the upper and lower decks, and the existing rear fence.

The witness testified that his home is located in the Riverside community, and that there are similar decks and fences located within the neighborhood, including other fences exactly like the one on the open space adjacent to his property. Mr. Braun stated that both the fence, and the existing decks, are compatible with other property in the neighborhood, and that they do not create any adverse impact on adjoining properties. There are no homes located behind his property, as the rear property line is bordered by open space with a walk and bike path. The fence sits approximately 6 feet from the old road bed, and does not interfere in any way with the use of the path. In addition, the Applicant testified that he maintains the open space enclosed by the fence.

Case No. 5257 – Dolores & William Braun

The Applicant introduced a letter dated April 12, 2002, from Trenton Property Service, Inc., which represents the Riverside Homeowners' Association. In that letter, the Property Manager, William L. Harrison, indicated that "The fence may stay in its existing location until the property is sold, or must also be removed at any time, if so requested by the Board of Directors."

The Department of Planning and Zoning recommended approval of the subject request in its May 29, 2002 Staff Report, stating that the "subject property is unique based on its configuration" and that "[t]he reduced setback for the deck will not adversely impact the adjacent properties, the open space area or the intent of the Code."

No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicants, Dolores & William Braun, are requesting an amendment to Board of Appeals Case No. 3522, pursuant to Sections 267-36B, Table VII, and 267-23C(1)(a)[6] of the Harford County Code, to allow an existing lower deck within the required 23 foot rear yard setback, and a variance to Section 267-24B, to allow an existing fence to be located in the open space not on the subject property in an R4/PRD District. Harford County Code Section 267-36B, Table VII: Design Requirements for Specific Uses in R4/Planned Residential Development District provides for a minimum 30 foot rear yard depth. The existing deck reduces the rear yard setback to 14 feet at its closest point from the property line.

Case No. 5257 – Dolores & William Braun

Section 267-23C(1)(a)[6] of the Harford County Code reads as follows:

C. Exceptions and modifications to minimum yard requirements.

(1) Encroachment.

(a) The following structures shall be allowed to encroach into the minimum yard requirements, not to exceed the following dimensions:

[6] Unenclosed patios and decks: up to, but not to exceed, twenty-five percent (25%) of the side or rear yard requirement for the district. No accessory structure shall be located within any recorded easement area.

Section 267-24B of the Harford County Code provides:

“Fences and walls. Fences and walls may be located in required yards in accordance with the following:

(2) Rear and side yards. Except as otherwise provided in this Part 1, walls and fences shall not exceed 8 feet in height above ground elevation. Tennis court fences shall not exceed 12 feet.”

Section 267-11 of The Harford County Code permits the granting of variances, stating:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.

(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

Case No. 5257 – Dolores & William Braun

The Maryland Court of Special Appeals set forth a two-prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This two prong test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the subject property is found to be unique, the hearing examiner may proceed to the second prong of the test. The second prong requires a determination as to whether literal enforcement of the zoning ordinance with regard to the unique property would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The lot is an unusually configured, triangular shaped parcel, which backs to open space. It must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicants. The Hearing Examiner finds that literal enforcement of the Code in this case would result in both practical difficulty and unreasonable hardship to the Applicants by forcing them to remove the existing lower deck, and fence.

Finally, the Hearing Examiner finds that the granting of the requested variance will not have any adverse impact on, or be substantially detrimental to adjacent properties, or materially impair the purpose of this Code or the public interest. There are similar decks and fences in the Riverside community, and the existing lower deck and split rail fence are compatible with other property in the neighborhood. Finally, the homeowner's association indicated that it has no problem with the existing fence remaining in its present location until the property is sold, or upon earlier request to remove the fence by the Board of Directors.

Case No. 5257 – Dolores & William Braun

For the foregoing reasons, the Hearing Examiner recommends approval of the Applicants' request subject to the following conditions:

1. That the Applicant amend the existing permits for the lower deck and fence to accurately reflect the existing conditions.
2. The Applicant shall be responsible for the cost of removal of the fence, if the homeowners' association requests that it be removed prior to the sale of the property.
3. That the variance for the fence shall be for the Applicants only, and may not be transferred to any subsequent owners of the subject property.
4. That the Applicant not encroach further into the setback than the distance requested herein.

Date JULY 23, 2002

Rebecca A. Bryant
Zoning Hearing Examiner